

Internal Revenue Service, Treasury

§ 1.401(a)(4)-0

States. For example, if a distribution consists of amounts representing employer contributions, employee contributions, and earnings on employer and employee contributions, no part of the portion of the distribution attributable to employee contributions, or earnings on employer and employee contributions, will be treated as income from sources within the United States.

[T.D. 7859, 47 FR 54297, Dec. 2, 1982]

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[T.D. 8485, 58 FR 46778, Sept. 3, 1993]

§ 1.401(a)(4)-1 Nondiscrimination requirements of section 401(a)(4).

(a) *In general.* Section 401(a)(4) provides that a plan is a qualified plan only if the contributions or the benefits provided under the plan do not discriminate in favor of HCEs. Whether a plan satisfies this requirement depends on the form of the plan and on its effect in operation. In making this determination, intent is irrelevant. This section sets forth the exclusive rules for determining whether a plan satisfies section 401(a)(4). A plan that complies in form and operation with the rules in this section therefore satisfies section 401(a)(4).

(b) *Requirements a plan must satisfy—*

- (1) *In general.* In order to satisfy section 401(a)(4), a plan must satisfy each of the requirements of this paragraph (b).
- (2) *Nondiscriminatory amount of contributions or benefits—*(i) *General rule.* Either the contributions or the benefits provided under the plan must be nondiscriminatory in amount. It need not be shown that both the contributions and the benefits provided are nondiscriminatory in amount, but only that either the contributions alone or the benefits alone are nondiscriminatory in amount.

(ii) *Defined contribution plans—*(A) *General rule.* A defined contribution plan satisfies this paragraph (b)(2) if the contributions allocated under the plan (including forfeitures) are nondiscriminatory in amount under § 1.401(a)(4)-2. Alternatively, a defined contribution plan (other than an ESOP) satisfies this paragraph (b)(2) if the equivalent benefits provided under the plan are nondiscriminatory in amount under § 1.401(a)(4)-8(b). Section 1.401(a)(4)-8(b) includes a safe-harbor testing method for contributions provided under a target benefit plan.

(B) *Section 401(k) plans and section 401(m) plans.* A section 401(k) plan is deemed to satisfy this paragraph (b)(2)